

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of
Housing and Urban Development,

on behalf of

[REDACTED]

Charging Party,

v.

Woodbury Gardens Redevelopment Company
Owners Corporation,

Respondent.

FHEO No. 02-09-0140-8

CHARGE OF DISCRIMINATION

JURISDICTION

On November 18, 2008, [REDACTED] ("Complainant") filed a verified complaint on his own behalf, and on behalf of the estate of his deceased wife, [REDACTED], with the United States Department of Housing and Urban Development ("HUD"). Complainant alleges that Woodbury Gardens Redevelopment Company Owners Corporation ("Respondent") failed to provide [REDACTED], a person with multiple disabilities, with a reasonable accommodation, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* ("Act"). In particular, Complainant alleges that Respondent unlawfully denied [REDACTED]'s request to keep a medically prescribed emotional support animal as a reasonable accommodation, and then Respondent intimidated, coerced and harassed the [REDACTED] family by, among other things, fining them and threatening them with eviction for keeping the animal.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (1) and (2). The Secretary has delegated to the General Counsel (74 Fed. Reg. 62802, Dec. 1, 2009), who has re-delegated to the Regional Counsel (76 Fed. Reg. 42465, July 18, 2011) the authority to issue such a Charge, following a determination of reasonable cause.

The Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred.

HUD’s efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C § 3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling after it is sold. 42 U.S.C. § 3604(f)(2)(A) and (B). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).
2. It is unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of the Act. 42 U.S.C. § 3617.

PARTIES

3. [REDACTED], prior to her death on October 18, 2007, was a person who suffered from depression, anxiety, severe pulmonary hypertension, cirrhosis, and diabetes, among other ailments. Because of those ailments, Ms. [REDACTED] had limited ability to breathe, walk, see and hear, and was bed-ridden. Her emotional impairments exacerbated her physical illness by interfering with her ability to breathe when experiencing anxiety. Ms. [REDACTED] was a person with disabilities as defined by the Act. 42 U.S.C. § 3602(h).
4. Complainant [REDACTED] (“Complainant”) is an elderly man and the surviving spouse of [REDACTED]. He and his son petitioned Respondent, on his wife’s behalf, to maintain a medically prescribed emotional support animal. He is an aggrieved person because he claims to have been injured by a discriminatory housing practice as defined by the Act. 42 U.S.C. § 3602(i)(1).
5. Respondent Woodbury Gardens Redevelopment Company Owners Corporation (“Co-op”) is a Long Island housing cooperative for senior adults located in Woodbury, New York, comprising 214 apartment units.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

6. On November 23, 2005, Complainant and Ms. [REDACTED] moved into a co-op apartment they had purchased at Woodbury Gardens. The apartment is a "dwelling" within the meaning of the Act. 42 U.S.C. § 3602(b).
7. Before the [REDACTED] purchased their apartment, Respondent had implemented "Co-op House Rule No. 10" which stated in relevant part "No bird or animals shall be kept harbored in the building unless the same in each instance have been expressly permitted [.]'" ("No Pet Policy").
8. Some time prior to August 7, 2006, the [REDACTED]s acquired a miniature schnauzer named "Mike," from their daughter. The dog provided emotional comfort and support to Ms. [REDACTED], reducing her depression and anxiety and helping her better cope with her physical ailments.
9. By letter dated September 20, 2006, Respondent demanded that the [REDACTED] remove their dog from their apartment by October 15, 2006, or face monthly fines and possible eviction.
10. On or about October 11, 2006, Complainant's adult son sent an e-mail to Respondent, requesting a Board meeting and an extension of the October 15th deadline. In that e-mail, Complainant's son advised Respondent that his mother was "an invalid" with several physical and mental disorders.
11. Respondent's Board convened a special meeting on October 12, 2006. At that meeting, Complainant explained that his wife was ill and Mike, their miniature schnauzer, "helps keep her healthy."
12. Complainant's son also spoke at the special meeting, explaining that Mike was "therapeutic to his ill mother" because she suffered from chronic and severe depression. Complainant's son pleaded with Respondent's Board to grant an exception to its No Pet Policy for his mother's welfare and mental stability.
13. Complainant and his son also presented the Board with a letter from a Clinical Social Worker, dated October 5, 2006, explaining that Ms. [REDACTED] suffered from depression and her dog raises her spirits and alleviates her depression.
14. By letter dated November 1, 2006, Respondent insisted that Ms. [REDACTED] submit to a medical examination by a doctor it selected. Respondent also insisted that Ms. [REDACTED] submit her medical records for "examination."
15. Ms. [REDACTED], who at this point in time was very frail and unable to leave her home without an ambulance, instead provided Respondent with three additional letters from her doctors attesting to her dire medical need for the dog.

16. The first of those letters, dated November 7, 2006, from one of Ms. [REDACTED]'s treating physicians noted that Ms. [REDACTED] suffers from multiple physical disorders, and stated "As her medical doctor, it is my professional opinion that her pulmonary hypertension can be worsened by the removal of her companion (pet). Not having her pet present in her home could cause her labored breathing to worsen."
17. The second letter Complainant sent to Respondent was dated November 9, 2006, from Ms. [REDACTED]'s pulmonary specialist, advising Respondent that Ms. [REDACTED]'s dog relaxes her, raises her spirits and helps with her depression. It concluded the dog was a medical necessity.
18. The third letter Complainant sent to Respondent was dated November 20, 2006, from another doctor treating Ms. [REDACTED] who stated "...the patient suffers from a chronic medical condition and a high anxiety level. Her pet helps relieve her anxiety and helps with her over all emotional well-being."
19. Despite Ms. [REDACTED]'s critical medical condition and ample evidence that she required an emotional support animal, Respondent refused to waive its No Pet Policy, and by letter dated February 14, 2007, informed Complainant and his wife that they would be charged legal fees with interest for harboring a dog in their unit.
20. By letter dated March 2, 2007, Complainant, through his attorney, again requested a reasonable accommodation allowing Ms. [REDACTED] keep her emotional support dog.
21. In response, by letter dated March 27, 2007, Respondent threatened Complainant and Ms. [REDACTED] with eviction for keeping their dog.
22. In September 2007, faced with the prospect of eviction and increasing fines and assessments, Complainant and his wife felt compelled to give their dog to a friend.
23. The departure of her emotional support dog and Respondent's earlier threats and fines caused Ms. [REDACTED] great emotional distress and aggravated her already extremely poor health.
24. Ms. [REDACTED] died on October 18, 2007, barely a month after her dog was given away.
25. After Ms. [REDACTED] death and the removal of her dog, Respondent continued to demand that Complainant pay the fines and legal fees associated with Complainant's request for a reasonable accommodation and Respondent's refusal to grant such an accommodation. Accordingly, on November 28, 2007, Complainant's attorney requested that Respondent reduce its fines and remove its legal fees.
26. On March 21, 2008, Respondent again demanded that Complainant pay the legal fees, fines and interest it had charged him because Ms. [REDACTED] had an emotional support animal. Respondent threatened to terminate Complainant's proprietary lease if he did not pay all of the charges.

27. On March 25, 2008, Complainant paid \$2,305.48 to Respondent, an amount which included assessments related to Ms. [REDACTED]'s emotional support animal.
28. Because of Respondent's unlawful denial of the [REDACTED]' request for a reasonable accommodation, Complainant and Ms. [REDACTED] suffered severe anxiety, distress and emotional trauma.
29. Complainant and Ms. [REDACTED] have also suffered severe emotional distress and anxiety because Respondent unlawfully threatened, intimidated, and fined Complainant and Ms. [REDACTED] because she tried to exercise her right to a reasonable accommodation under the Act.

FAIR HOUSING ACT VIOLATIONS:

30. Respondent has violated the Act because it refused to allow Ms. [REDACTED] to keep a medically necessary emotional support animal and unreasonably demanded she submit to a medical examination by its own doctor, constituting a discriminatory refusal to make a reasonable accommodation in its rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant and his wife an equal opportunity to use and enjoy their dwelling. 42 U.S.C. § 3604(f)(2)(A) and (B); 42 U.S.C. § 3604(f)(3)(B).
31. Respondent has violated the Act because it fined and charged Complainant and Ms. [REDACTED] legal fees for failing to remove a medically necessary support animal and threatened to evict them unless those charges were paid. 42 U.S.C. § 3617.

CONCLUSION

WHEREFORE, the Secretary of HUD, through the office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B) and 42 U.S.C. §3617 and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of handicap status against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);
3. Mandates Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

4. Enjoins Respondent from intimidating, coercing, threatening, or interfering with Complainant's rights granted or protected by the Act;
5. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant and the estate of [REDACTED] for damages caused by Respondent's discriminatory conduct;
6. Assesses a civil penalty against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 CFR § 180.671 (2011) ; and
7. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

/S/

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/S/

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Date: September 16, 2011